IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4989 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KALIDAS PUNJABHAI PADHIYAR &6 - Petitioner(s)

Versus

LALITKUMAR KARANSINH MANDAVAT - Respondent(s)

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Appearance :

Mr. PM Thakkar, Sr. Advocate for M/S THAKKAR ASSOC. for Petitioner No(s).: 1,2,3,4,5,6 - 6.

MR AJ Patel for MR SHITAL R PATEL for Respondents

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 21/06/2005

ORAL JUDGMENT

1.Rule. Mr. AJ Patel, learned advocate appears and waives service of notice of rule on behalf of the respondents.

2.By filing instant petition under Articles 226 and 227 of the Constitution, the petitioners/original defendants seek to challenge the order dated 31.7.2004 rendered in Misc. Civil Appeal No.98 of 2002 by the learned Joint District Judge and Fast Track Court No.1, Vadodara by which the appeal filed by the petitioners came to be dismissed and thereby the order dated 17.4.2002 recorded below application Ex.5 in Regular Civil suit No.1219 of 2000 by the learned 3rd Joint Civil Judge (SD), Vadodara allowing the application Ex.5 in favour of the respondents by granting injunction in their favour with regard to the suit property came to be affirmed and further ordered that the petitioners Nos.1 and 2/ original defendant Nos.1 and 2 shall pay compensatory cost of Rs.10,000/- to each of the plaintiffs.

1.At the time of hearing of this petition, Mr. PM Thakkar, learned Senior Advocate for the petitioners, states that he confines the challenge in this petition to the uncalled observations made by the learned lower appellate Judge in paragraph 24 of the judgment and the compensatory cost which is imposed on the petitioner Nos.1 and 2 which, according to him, is against the statutory provisions contained under Section 35A of the Code of Civil Procedure ('the Code' for short). According to him, the observations made in paragraph 24 of the impugned order are uncalled for which cast stigma upon the petitioners Nos.1 and 2 as the learned Judge has observed that prima facie petitioner Nos.1 and 2 have also committed serious criminal offence. He therefore urged that appropriate orders may be passed to the effect that the observations made in the interlocutory orders are tentative in nature which have no bearing in the final trial. He also urged that the observations made by the learned appellate Judge against the petitioners Nos.1 and 2 that prima facie they have committed serious offence may be deleted. It is further submitted by him that in view of the statutory provisions contained under section 35A of the Code in any appeal or revision proceedings order for compensatory cost cannot be passed. Therefore, he urged that appropriate orders may be passed by allowing this petition.

4. Mr. AJ Patel, learned advocate for the respondents fairly submitted that in view of the statutory provisions contained under

section 35A of the Code, appropriate orders of quashing and setting aside the imposition of cost may be passed. He however urged that it is not necessary for this Court to state that whatever observations made in the impugned orders are tentative in nature as it is settled proposition of law by the Supreme Court in catena of decisions that observations made by the court at interlocutory stage are tentative in nature and which has no bearing at the time of deciding the main suit. However, he urged that appropriate orders may be passed.

5. This Court has considered the submissions advanced by the learned advocates for the parties, perused the impugned order as well as statutory provisions contained in section 35A of the Code.

6. There is no manner of doubt that Section 35A of the Code in terms stipulates that compensatory cost cannot be imposed in an appeal or revision proceedings. The impugned order is passed in exercise of powers conferred under Order 43 Rule 1 (r) of the Code by the learned Joint District Judge and Fast track Court No.1, Vadodara. Therefore, obviously he has no power to impose cost of Rs.10,000/- on the petitioners Nos.1 and 2/ original defendant Nos.1 and 2. Therefore the said order is required to be struck down by quashing and setting aside the same.

7. It is settled principle of law that in appeal or any proceedings against an interlocutory order the observations and findings arrived at by the court below in an interlocutory proceeding are tentative in nature which have no bearing at the time of adjudication of final trial.

8. In view of the settled principles of law enunciated by the Supreme Court in the the case of **Wander Ltd v. Antox India P. Ltd.,** 1990 (Supp) SCC 727, the observations made by the learned Joint District Judge in para 24 of his judgment are obviously prima facie finding and it is tentative in nature which has no bearing on the final trial. Therefore it is needless to say that while deciding the Regular Civil Suit No.1219 of 2000 the learned trial Judge shall not be influenced by the observations made in para 24 of the judgment of the learned Joint District Judge and Fast Track Court No.1, Baroda and shall decide the suit on the basis of the evidence that may be adduced and produced before him strictly in accordance with law.

9. Besides this the observations made in para 24 of the judgment that prima facie petitioner Nos.1 and 2/original defendant Nos.1 and 2 have committed serious criminal offence but that being no subject before the Court the learned lower appellate Judge did not want to comment on this issue, is uncalled for. Therefore the said observation is hereby expunged from the impugned judgment and order.

10. With the aforesaid observation and direction, this petition is allowed in part and accordingly the petition is partly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.M. Kapadia, J.)

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